

D. MICHAEL FISHER
PENNSYLVANIA OFFICE OF ATTORNEY GENERAL
GUIDE FOR TELEMARKETERS

In March, 1997, three pieces of legislation which directly impact on individuals and businesses who conduct business through telemarketing became law. In addition to creating a registration process for telemarketers with the Office of Attorney General, these laws also create new civil and criminal penalties for certain conduct. These provisions, as outlined below, help to create an atmosphere for telemarketing that both protects consumers and is business friendly.

Registration

Who Must Register: Unless exempt from registration by law (as noted below), you must register with the Office of Attorney General if you use a telephone as part of a plan, program or campaign to induce the purchase of goods or services, or to solicit contributions for a charity when either of the following apply:

1. Telephone calls are made to or received from a consumer within Pennsylvania; or
2. You are within Pennsylvania when telephone calls are made to or received from consumers, regardless of where the consumer is located.

Registration Requirements:

1. All businesses required to register with the Office of Attorney General must do so 30 days prior to offering consumer goods or services for sale.
2. Registration forms must be accompanied by a surety bond in the amount of \$50,000 with conditions and in a form prescribed by the Office of Attorney General. Cash, a certificate of deposit or government bonds in the amount of \$50,000 may be deposited with the Office of Attorney General in lieu of a surety bond.
3. Information required for proper registration includes:
 - Name, address and telephone number of the business.
 - Name, address and telephone number of each principal owner of the business; and;
 - A list of the telemarketers currently employed by the business.
4. Each registration application shall be accompanied by a \$500 fee.

5. Registration is valid for a period of two years at which time all businesses conducting telemarketing, and not otherwise exempt, must re-register pursuant to these requirements including payment of the \$500 application fee.

Failure to register pursuant to the "Telemarketer Registration Act" can result in up to two years imprisonment, a \$5,000 fine and a revocation of the right to conduct telemarketing in Pennsylvania, as well as additional civil penalties.

Exemptions to Registration - The following persons or businesses are exempt from mandatory registration with the Office of Attorney General:

- Those soliciting sales through a catalog which meets all of the following requirements:

- 1 - Contains a written description or illustration and a price for each of the goods or services offered for sale;
- 2 - Includes the seller's business address;
- 3 - Is at least 24 pages in length;
- 4 - Is distributed in more than one state;
- 5 - Is distributed not less than once a year; and
- 6 - Has an annual circulation of at least 250,000

- Those who do not intend, and do not in fact, complete the sales presentation during the telephone solicitation, but rather complete the presentation at a face-to-face meeting or by sending descriptive literature and not requiring payment prior to the purchasers review of the descriptive literature.

- Most book, video or record clubs or other contractual agreements including "negative option plans" regulated by the Federal Trade Commission, continuity plans, standing order arrangements and plans in which the seller provides the consumer with a form which the customer may use to instruct the seller not to send offered merchandise.

- Persons or businesses conducting business-to-business sales where the selling business has been operating for three years under the same business name and has at least 50% of its dollar volume consisting of repeat sales to existing businesses.

- Any of the following organizations unless they use professional fund-raising counsel or a professional solicitor which is not registered nor exempt from registration pursuant to these guidelines.

- 1 - Educational institutions and related associations, foundations, etc. when the institution's curriculum is registered, approved or accredited by the Department of Education or a recognized accrediting body.
- 2 - Hospitals and any foundation when the hospital is subject to regulation by the Department of Health or the Department of Public Welfare.
- 3 - Public non-profit libraries receiving financial aid from the government and which file an annual fiscal report with the State Library System.
- 4 - Non-profit and charitable senior citizen centers and nursing homes which are held to be tax-exempt by the Internal Revenue Service.
- 5 - PTA and PTO recognized in a notarized letter from the school district.
- 6 - Corporations established by Congress that must submit annual reports to Congress after audit by the Department of Defense.
- 7 - Charities receiving less than \$25,000 per year in contributions.

- Persons or businesses which have been operating under the same business name for three years when soliciting previous customers.

- Persons or businesses soliciting for the sale of newspapers, magazines or other periodicals when the following conditions are met:

- 1 - The publisher has been in business for at least two years under the same business name;
- 2 - The person soliciting is an employee of the publisher or an employee of an agent of the publisher. An "agent" must have a written agreement with the publisher; and
- 3 - The total costs and the quantity of periodicals to be received are disclosed during the initial contact.

- Retail businesses or agents of a retail business operating for at least two years in Pennsylvania under the same business name as used in telemarketing when each of the following is true:

- 1 - The products/services are displayed and offered for sale at the retail establishment; and
- 2 - The majority of the seller's business is done at the retail location.

- Persons or businesses soliciting for the sale of food or produce which will cost the purchaser less than \$500 when the person or business selling the food or produce has been in business, under the same name, for at least two years.

- Issuers, or subsidiaries of issuers, that has a class of securities subject to Section 12 of the Securities Exchange Act of 1934 and which is either registered or exempt from registration pursuant to certain subsections of that Act.
- Persons or businesses in the business of telephone solicitations ("telemarketing businesses") when they have been in business, under the same ownership and control, for at least five years and receive 75% of its gross telemarketing sales revenues from contracts with businesses exempt from registration.
- Persons or businesses licensed, certificated or registered with a Federal or State agency while acting within the scope of the business for which the license, certification or registration is required (*For example, a utility registered with the Public Utility Commission would be exempt from the registration to the extent its solicitations deal with the providing of gas, electricity, etc. If, however, the utility began to solicit for the sale of appliances through telemarketing, it would be required to register*).

*****NOTE:** Regardless of any exemption above which may apply, persons or businesses in the business of making telephone solicitations for other businesses must register with the Office of Attorney General unless they have been under the same ownership and control for at least five years and meet one of the criteria outlined above.

*****NOTE:** The burden of proving an exemption to registration in a civil claim, is on the person claiming it and the burden of producing evidence to support a defense to a criminal charge stemming from failure to register is on the person raising the defense.